

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)	
)	
Plaintiffs,)	
v.)	No. 1:23-cv-00108-LMB-JFA
)	
GOOGLE LLC,)	
)	
Defendant.)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL

Pursuant to Local Civil Rule 5, Plaintiffs, through their undersigned counsel, hereby respectfully submit the instant memorandum of law in support of their motion to seal portions of an exhibit to their Motion to Compel Production of Successor-Custodian Documents and Relevant Source Code. The redacted portions of the exhibit contain information designated by Defendant as confidential under the parties' protective order (ECF No. 98 ¶ 23). The unredacted exhibit has been filed electronically using the sealed filing events at ECF No. 233.

INTRODUCTION

The exhibit to Plaintiffs' Motion references the following material that Google has designated as confidential: (i) certain correspondence from Google to Plaintiffs; and (ii) Google's responses and objections to certain of Plaintiffs' discovery requests. Pursuant to paragraph 23 of the Protective Order (ECF No. 98), through this motion Plaintiffs inform the Court of the confidentiality designations of these materials and request that the Court seal the redacted portions of the exhibit, and maintain the redacted exhibit on the public docket, in order to provide Google sufficient time to provide the Court with support for the need to seal the redacted portions of the exhibit. But for the requirements of the Protective Order, Plaintiffs would not seek to seal these portions of the exhibit.

ARGUMENT

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption in favor of public access can be overcome only by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

Plaintiffs do not believe the information redacted from the exhibit to their Motion is of a type that outweighs the presumption in favor of public access. Nonetheless, because the material was designated as confidential by Google, Plaintiffs have filed the present motion in accordance with their obligations under paragraph 23 of the Protective Order. As stated in the notice filed concurrently with this memorandum, any interested member of the public and any other party may indicate their position on the motion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court seal ECF No. 233, and permit the redacted version of the exhibit to Plaintiffs’ Motion (ECF No. 229-1) to remain on the public docket.

Dated: May 26, 2023

Respectfully submitted,

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